

## Elimination of the State Mining and Geology Board

### PUBLIC CONTRACT CODE

10295.5. (a) Notwithstanding any other provision of law, no state agency shall acquire or utilize sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code as having either of the following:

(1) An approved reclamation plan and financial assurances covering the affected surface mining operation.

(2) An appeal pending before the Department of Conservation ~~State Mining and Geology Board~~ pursuant to subdivision (e) of Section 2770 of the Public Resources Code with respect to the reclamation plan or financial assurances.

(b) Notwithstanding any other provision of law, no state agency shall contract with a person who is not a surface mining operator, but who is supplying or utilizing sand, gravel, aggregates, or other minerals, to perform work for, or supply materials to, a state agency, unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code as having either of the following:

(1) An approved reclamation plan and financial assurances covering the affected surface mining operation.

(2) An appeal pending before the Department of Conservation ~~State Mining and Geology Board~~ pursuant to subdivision (e) of Section 2770 of the Public Resources Code with respect to the reclamation plan or financial assurances.

(c) For purposes of this section, "minerals" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

(d) The requirements of this section shall apply to mining operations on federal lands or Indian lands that are subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code) pursuant to a memorandum of understanding between the

Department of Conservation and the federal agency having jurisdiction over the lands.

## **PUBLIC RESOURCES CODE**

611. Notwithstanding any other provision of this code or of law and except as provided in the State Building Standards Law, Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, on and after January 1, 1980, the department, director, the State Geologist, ~~the State Mining and Geology Board~~, or the

California Geological Survey shall not adopt nor publish a building standard as defined in Section 18909 of the Health and Safety Code unless the provisions of Sections 18930, 18933, 18938, 18940, 18943, 18944, and 18945 of the Health and Safety Code are expressly excepted in the statute under which the authority to adopt rules, regulations, or orders is delegated. Any building standard adopted in violation of this section shall have no force or effect. Any building standard adopted before January 1, 1980, pursuant to this code and not expressly excepted by statute from such provisions of the State Building Standards Law shall remain in effect only until January 1, 1985, or until adopted, amended, or superseded by provisions published in the State Building Standards Code, whichever occurs sooner.

~~660. There is in the department a State Mining and Geology Board consisting of nine members appointed by the Governor, subject to confirmation by the Senate.~~

~~661. As used in this article, "board" means the State Mining and Geology Board and "division" means the California Geological Survey of the department.~~

~~662. (a) One member of the board shall be a professional geologist with background and experience in mining geology; one member shall be a mining engineer with background and experience in mining minerals in California; one member shall have background and experience in groundwater hydrology, water quality, and rock chemistry; one member shall be a representative of local government with background and experience in urban planning; one member shall have background and experience in the field of environmental protection or the study of ecosystems; one member shall be a professional geologist, registered geophysicist, registered civil engineer, or registered structural engineer with background and experience in seismology; one member shall be a landscape architect with background and experience in soil conservation or revegetation of disturbed soils; one member shall have background and experience in mineral resource conservation, development, and utilization; and one member shall not be required to have specialized experience.~~

~~(b) All members of the board shall represent the general public interest, but not more than one-third of the members at any one time may be currently employed by, or receive more than 25 percent of their annual income, not to exceed \$25,000 a year per member, from an entity that owns or operates a mine in California. The representative of local government shall not be considered an employee of an entity that owns or operates a mine if the lead agency employing the representative owns or operates a mine. For purposes of this section, retirement or other benefits paid by a mining entity to an individual who is no longer employed by that entity are not considered to be compensation, if those benefits were earned prior to the date the individual terminated his or her employment with the entity.~~

~~(c) If a member of the board determines that he or she has a conflict of interest on a particular matter before the board pursuant to subdivision (b) or Section 663, he or she shall provide the clerk of the board with a brief written explanation of the basis for the conflict of interest, which shall become a part of the public record of the board. The written explanation shall be delivered prior to the time the matter to which it pertains is voted on by the board. This disclosure requirement is in addition to any other conflict-of-interest disclosure requirement imposed by law.~~

~~663. (a) No member of the board shall participate in any action of the board or attempt to influence any decision of the board that involves himself or herself, or any person with whom he or she is connected, as a director, officer, paid consultant, or full-time or part-time employee, or in which he or she has a financial interest within the meaning of Section 87103 of the Government Code.~~

~~(b) No board member shall participate in any proceeding before any state or local agency as a consultant or in any other capacity on behalf of any person who engages in surface mining operations.~~

~~(c) Upon request of any person, or on his or her own initiative, the Attorney General may file a complaint in the superior court for the county in which the board has its principal office alleging that a board member has knowingly violated this section, alleging the facts upon which the allegation is based, and asking that the member be removed from office. Further proceedings shall be in accordance as nearly as practicable with rules governing civil actions. If after trial the court finds that the board member has knowingly violated this section it shall order the member removed from office.~~

~~663.1. (a) For the purposes of this section, "ex parte communication" means any oral or written communication between a member of the board and an interested person about a matter within the board's jurisdiction that does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.~~

~~(b) For purposes of this section, "a matter within the board's jurisdiction" means any action on a reclamation plan or financial assurance appealed pursuant to subdivision (e) of Section 2770, any review of an order setting administrative~~

penalties pursuant to Section 2774.2, or any review of an appeal pursuant to Section 2775.

~~(c) A board member or any person, other than a staff member of the board, department, or any other state agency, who is acting in his or her official capacity and who intends to influence the decision of the board on a matter within the board's jurisdiction, shall not conduct an ex parte communication, unless the board member or the person who engages in the communication with the board member discloses that communication in one of the following ways:~~

~~(1) The board member or the person fully discloses the communication and makes public the ex parte communication by providing a full report of the communication to the executive officer or, if the communication occurs within seven days of the next board hearing, to the board on the record of the proceeding of that hearing.~~

~~(2) When two or more board members receive substantially the same written communication or receive the same oral communication from the same party on the same matter, one of the board members fully discloses the communication on behalf of the other board member or members who received the communication and requests in writing that it be placed in the board's official record of the proceeding.~~

~~(d) (1) The board shall adopt standard disclosure forms for reporting ex parte communications which shall include, but not be limited to, all of the following information:~~

~~(A) The date, time, and location of the communication.~~

~~(B) The identity of the person or persons initiating and the person or persons receiving the communication.~~

~~(C) A complete description of the content of the communication, including the complete text of any written material that was part of the communication.~~

~~(2) The executive officer shall place in the public record any report of an ex parte communication.~~

~~(e) Communications shall cease to be ex parte communications when fully disclosed and placed in the board's official record.~~

~~(f) In addition to any other applicable penalty, a board member who knowingly violates this section is subject to a civil fine, not to exceed seven thousand five hundred dollars (\$7,500). Notwithstanding any law to the contrary, the court may award attorneys' fees and costs to the prevailing party.~~

~~(g) Notwithstanding Section 11425.10 of the Government Code, the ex parte communications provisions of the Administrative Procedure Act (Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to proceedings of the board under this code.~~

663.2. (a) No board member shall make, participate in making, or in any other way attempt to use his or her official position to influence a board decision about which the member has knowingly had an ex parte communication that has not been reported pursuant to Section 663.1.

~~(b) In addition to any other applicable penalty, including a civil fine imposed pursuant to subdivision (f) of Section 663.1, a board member who knowingly violates this section shall be subject to a civil fine, not to exceed seven thousand five hundred dollars (\$7,500). Notwithstanding any law to the contrary, the court may award attorneys' fees and costs to the prevailing party.~~

~~664. Each member of the board shall hold office for four years. Vacancies shall be immediately filled by the Governor.~~

~~667. Each member of the board shall receive one hundred dollars (\$100) for each day during which the member is engaged in the performance of official duties. The compensation of each member, except the compensation of the chairman, shall not, however, exceed in any one fiscal year the sum of four thousand dollars (\$4,000). The chairman of the board may receive compensation of not to exceed five thousand dollars (\$5,000) in any one fiscal year for the performance of official duties. In addition to such compensation, each member shall be reimbursed for necessary traveling and other expenses incurred in the performance of official duties.~~

~~668. The board shall maintain its headquarters in Sacramento and shall hold meetings at such times and at such places as shall be determined by it. Five members of the board shall constitute a quorum for the purpose of transacting any business of the board. A majority affirmative vote of the total authorized membership of the board shall be necessary to adopt, amend, or repeal state policy for the reclamation of mined lands adopted pursuant to Article 4 (commencing with Section 2755) of Chapter 9 of Division 2. All meetings of the board shall be open to the public.~~

~~669. The Governor shall designate the chairman of the board from among the members of the board. The person designated as the chairman shall hold such office at the pleasure of the Governor. The board shall annually elect a vice chairman from among its members.~~

~~670. The board may appoint an executive officer who shall be exempt from civil service pursuant to subdivision (e) of Section 4 of Article XXIV of the California Constitution. The board may also employ such clerical assistance as may be necessary for the proper discharge of its duties. Neither the board nor its employees shall have or be given any powers in relation to the administration of the division.~~

~~671. The director shall have no power to amend or repeal any order, ruling, or directive of the board.~~

~~672. The department board shall represent the state's interest in the development, utilization, and conservation of the mineral resources of the state and the reclamation of mined lands, as provided by law, and federal matters~~

pertaining to mining, and shall determine, establish, and maintain an adequate surface mining and reclamation policy. The department ~~board~~ shall also represent the state's interest in the development of geological information necessary to the understanding and utilization of the state's terrain, and seismological and geological information pertaining to earthquake and other geological hazards. ~~General policies for the division shall be determined by the board.~~

673. The board shall also serve as a policy and appeals board for the purposes of Chapter 7.5 (commencing with Section 2621) of Division 2.

675. The department ~~board~~ may provide for a statewide program of research regarding the technical phases of reclaiming mined lands which may be delegated to it by law and may accept funds from the United States or from any person to aid in carrying out the provisions of this section. The department ~~board~~ may conduct such a program independently or by contract or in cooperation with any person, public or private organization, federal agency, or state agency, including any political subdivision of the state.

676. The department ~~board~~ shall provide for a public information program on matters involving the state's terrain, mineral resources, mining, the reclamation of mined lands, and the seismological and geological aspects of earthquakes and other geological hazards.

677. The ~~board shall nominate, and the~~ director shall appoint, the State Geologist, who shall either be registered in compliance with the Geologist and Geophysicist Act at least one year from the date of appointment, or the Board of Geologists and Geophysicists may, upon the review of academic and professional experience, grant registration. The State Geologist shall possess general knowledge of mineral resources, structural geology, seismology, engineering geology, and related disciplines in science and engineering, and the reclamation of mined lands and waters. The State Geologist shall advise the director regarding technical, scientific, and engineering issues, including the scientific quality of the division's products and activities.

678. The director may authorize the State Geologist to exercise his power to appoint employees of the division in accordance with the State Civil Service Act. The director may authorize the State Geologist, or any employee of the division, to exercise any power granted to, or perform any duty imposed upon, the director by the State Civil Service Act.

2008. ~~"Board" means the State Mining and Geology Board.~~

2200.5. For the purposes of this chapter, "lead agency" means the city, county, San Francisco Bay Conservation and Development Commission, or the department ~~board~~ that has the principal responsibility for approving a surface

mining operation or reclamation plan pursuant to Chapter 9 (commencing with Section 2710).

2207. (a) The owner or the operator of a mining operation within the state shall forward to the director annually, not later than a date established by the director, upon forms developed by the department ~~approved by the board from time to time~~, a report that identifies all of the following:

(1) The name, address, and telephone number of the person, company, or other owner of the mining operation.

(2) The name, address, and telephone number of a designated agent who resides in this state, and who will receive and accept service of all orders, notices, and processes of the lead agency, ~~board~~, director, or court.

(3) The location of the mining operation, its name, its mine number as issued by the Office of Mine Reclamation ~~Bureau of Mines~~ or the director, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey 7 1/2-minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

(8) Proof of annual inspection by the lead agency.

(9) Proof of financial assurances.

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.

(13) The approximate total of disturbed acreage reclaimed during the previous calendar year.

(14) The approximate total unreclaimed disturbed acreage remaining as of the end of the calendar year.

(15) The total production for each mineral commodity produced during the previous year.

(16) A copy of any approved reclamation plan and any amendments or conditions of approval to any existing reclamation plan approved by the lead agency.

(b) (1) Every year, not later than the date established by the director, the person submitting the report pursuant to subdivision

(a) shall forward to the lead agency, upon forms furnished by the department ~~board~~, a report that provides all of the information specified in paragraphs (1) to (16), inclusive, of subdivision (a).

(2) The owner or operator of a mining operation shall allow access to the property to any governmental agency or the agent of any company providing financial assurances in connection with the reclamation plan, in order that the reclamation can be carried out by the entity or company, in accordance with the provisions of the reclamation plan.

(c) Subsequent reports shall include only changes in the information submitted for the items described in subdivision (a), except that, instead of the approved reclamation plan, the reports shall include any reclamation plan amendments approved during the previous year. The reports shall state whether review of a reclamation plan, financial assurances, or an interim management plan is pending under subdivision (b), (c), (d), or (h) of Section 2770, or whether an appeal before the department ~~board~~ or lead agency governing body is pending under subdivision (e) or (h) of Section 2770. The director shall notify the person submitting the report and the owner's designated agent in writing that the report and the fee required pursuant to subdivision (d) have been received, specify the mining operation's mine number if one has not been issued by the Office of Mine Reclamation ~~Bureau of Mines~~, and notify the person and agent of any deficiencies in the report within 90 days of receipt. That person or agent shall have 30 days from receipt of the notification to correct the noted deficiencies and forward the revised reports to the director and the lead agency. Any person who fails to comply with this section, or knowingly provides incorrect or false information in reports required by this section, may be subject to an administrative penalty as provided in subdivision (c) of Section 2774.1.

(d) (1) The department ~~board~~ shall impose, by regulation, pursuant to paragraph (2), an annual reporting fee on, and method for collecting annual fees from, each active or idle mining operation. The maximum fee for any single mining operation may not exceed four thousand dollars (\$4,000) annually and may not be less than one hundred dollars (\$100) annually, as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-06 fiscal year and annually thereafter.

(2) (A) The department ~~board~~ shall adopt, by regulation, a schedule of fees authorized under paragraph (1) to cover the department's cost in carrying out this section and Chapter 9 (commencing with Section 2710), as reflected in the Governor's Budget, and may adopt those regulations as emergency regulations. In establishing the schedule of fees to be paid by each active and idle mining operation, the fees shall be calculated on an equitable basis reflecting the size and type of operation. The department ~~board~~ shall also consider the total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan.

(B) Regulations adopted pursuant to this subdivision shall be adopted by the department ~~board~~ in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of any emergency regulations pursuant to this subdivision shall be considered necessary to address an emergency and shall be considered by the Office of



Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(3) The total revenue generated by the reporting fees may not exceed, and may be less than, the amount of three million five hundred thousand dollars (\$3,500,000), as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-06 fiscal year and annually thereafter. If the director determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the department ~~board~~ shall adjust the fees to compensate for the overcollection or undercollection of revenues.

(4) (A) The reporting fees established pursuant to this subdivision shall be deposited in the Mine Reclamation Account, which is hereby created. Any fees, penalties, interest, fines, or charges collected by the director ~~or board~~ pursuant to this chapter or Chapter 9 (commencing with Section 2710) shall be deposited in the Mine Reclamation Account. The money in the account shall be available to the department ~~and board~~, upon appropriation by the Legislature, for the purpose of carrying out this section and complying with Chapter 9 (commencing with Section 2710), which includes, but is not limited to, classification and designation of areas with mineral resources of statewide or regional significance, reclamation plan and financial assurance review, mine inspection, and enforcement.

(B) (i) In addition to reporting fees, the department ~~board~~ shall collect five dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of silver mined within the state and shall deposit the fees collected in the Abandoned Mine Reclamation and Minerals Fund Subaccount, which is hereby created in the Mine Reclamation Account. The department may expend the moneys in the subaccount, upon appropriation by the Legislature, for only the purposes of Section 2796.5 and as authorized herein for the remediation of abandoned mines.

(ii) Notwithstanding subdivision (j) of Section 2796.5, fees collected pursuant to clause (i) may also be used to remediate features of historic abandoned mines and lands that they impact. For the purposes of this section, historic abandoned mines are mines for which operations have been conducted before January 1, 1976, and include, but are not limited to, historic gold and silver mines.

(5) In case of late payment of the reporting fee, a penalty of not less than one hundred dollars (\$100) or 10 percent of the amount due, whichever is greater, plus interest at the rate of 1 1/2 percent per month, computed from the delinquent date of the assessment until and including the date of payment, shall be assessed. New mining operations that have not submitted a report shall submit a report prior to commencement of operations. The new operation shall submit its fee according to the reasonable fee schedule adopted by the department ~~board~~, and the month that the report is received shall become that operation's anniversary month.

(e) The lead agency, or the department ~~board~~ when acting as the lead agency, may impose a fee upon each mining operation to cover the reasonable costs

incurred in implementing this chapter and Chapter 9 (commencing with Section 2710).

(f) For purposes of this section, "mining operation" means a mining operation of any kind or character whatever in this state, including, but not limited to, a mining operation that is classified as a "surface mining operation" as defined in Section 2735, unless excepted by Section 2714. For the purposes of fee collections only, "mining operation" may include one or more mines operated by a single operator or mining company on one or more sites, if the total annual combined mineral production for all sites is less than 100 troy ounces for precious metals, if precious metals are the primary mineral commodity produced, or less than 100,000 short tons if the primary mineral commodity produced is not precious metals.

(g) Any information in reports submitted pursuant to subdivision (a) that includes or otherwise indicates the total mineral production, reserves, or rate of depletion of any mining operation may not be disclosed to any member of the public, as defined in subdivision (b) of Section 6252 of the Government Code. Other portions of the reports are public records unless excepted by statute. Statistical bulletins based on these reports and published under Section 2205 shall be compiled to show, for the state as a whole and separately for each lead agency, the total of each mineral produced therein. In order not to disclose the production, reserves, or rate of depletion from any identifiable mining operation, no production figure shall be published or otherwise disclosed unless that figure is the aggregated production of not less than three mining operations. If the production figure for any lead agency would disclose the production, reserves, or rate of depletion of less than three mining operations or otherwise permit the reasonable inference of the production, reserves, or rate of depletion of any identifiable mining operation, that figure shall be combined with the same figure of not less than two other lead agencies without regard to the location of the lead agencies. The bulletin shall be published annually by June 30 or as soon thereafter as practicable.

(h) The approval of a form by the department ~~board~~ pursuant to this section is not the adoption of a regulation for purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and is not subject to that chapter.

2621.5. (a) It is the purpose of this chapter to provide for the adoption and administration of zoning laws, ordinances, rules, and regulations by cities and counties in implementation of the general plan that is in effect in any city or county. The Legislature declares that this chapter is intended to provide policies and criteria to assist cities, counties, and state agencies in the exercise of their responsibility to prohibit the location of developments and structures for human occupancy across the trace of active faults. Further, it is the intent of this chapter to provide the citizens of the state with increased safety and to minimize the loss of life during and immediately following earthquakes by facilitating seismic retrofitting to strengthen buildings, including historical buildings, against ground shaking.

(b) This chapter is applicable to any project, as defined in Section 2621.6, which is located within a delineated earthquake fault zone, upon issuance of the official earthquake fault zones maps to affected local jurisdictions, except as provided in Section 2621.7.

(c) The implementation of this chapter shall be pursuant to policies and criteria established and adopted by the department board.

2622. (a) In order to assist cities and counties in their planning, zoning, and building-regulation functions, the State Geologist shall delineate, by December 31, 1973, appropriately wide earthquake fault zones to encompass all potentially and recently active traces of the San Andreas, Calaveras, Hayward, and San Jacinto Faults, and such other faults, or segments thereof, as the State Geologist determines to be sufficiently active and well-defined as to constitute a potential hazard to structures from surface faulting or fault creep. The earthquake fault zones shall ordinarily be one-quarter mile or less in width, except in circumstances which may require the State Geologist to designate a wider zone.

(b) Pursuant to this section, the State Geologist shall compile maps delineating the earthquake fault zones and shall submit those maps to all affected cities, counties, and state agencies, not later than December 31, 1973, for review and comment. Concerned jurisdictions and agencies shall submit all comments to the department ~~State Mining and Geology Board~~ for review and consideration within 90 days. Within 90 days of that review, the State Geologist shall provide copies of the official maps to concerned state agencies and to each city or county having jurisdiction over lands lying within that zone.

(c) The State Geologist shall continually review new geologic and seismic data and shall revise the earthquake fault zones or delineate additional earthquake fault zones when warranted by new information. The State Geologist shall submit all revised maps and additional maps to all affected cities, counties, and state agencies for their review and comment. Concerned jurisdictions and agencies shall submit all comments to the department ~~State Mining and Geology Board~~ for review and consideration within 90 days. Within 90 days of that review, the State Geologist shall provide copies of the revised and additional official maps to concerned state agencies and to each city or county having jurisdiction over lands lying within the earthquake fault zone.

(d) In order to ensure that sellers of real property and their agents are adequately informed, any county that receives an official map pursuant to this section shall post a notice within five days of receipt of the map at the offices of the county recorder, county assessor, and county planning commission, identifying the location of the map and the effective date of the notice.

2623. (a) The approval of a project by a city or county shall be in accordance with policies and criteria established by the department ~~State Mining and Geology Board~~ and the findings of the State Geologist. In the development of those policies and criteria, the department ~~State Mining and Geology Board~~ shall seek the comment and advice of affected cities, counties, and state agencies. Cities and counties shall require, prior to the approval of a project, a geologic report defining and delineating any hazard of surface fault rupture. If the city or

county finds that no undue hazard of that kind exists, the geologic report on the hazard may be waived, with the approval of the State Geologist.

(b) After a report has been approved or a waiver granted, subsequent geologic reports shall not be required, provided that new geologic data warranting further investigations is not recorded.

(c) The preparation of geologic reports that are required pursuant to this section for multiple projects may be undertaken by a geologic hazard abatement district.

2625. (a) Each applicant for approval of a project may be charged a reasonable fee by the city or county having jurisdiction over the project.

(b) Such fees shall be set in an amount sufficient to meet, but not to exceed, the costs to the city or county of administering and complying with the provisions of this chapter.

(c) The geologic report required by Section 2623 shall be in sufficient detail to meet the criteria and policies established by the State Geologist and the department ~~State Mining and Geology Board~~ for individual parcels of land.

2630. In carrying out the provisions of this chapter, the State Geologist and the department ~~board~~ shall be advised by the Seismic Safety Commission.

2693. As used in this chapter:

(a) "City" and "county" includes the City and County of San Francisco.

(b) "Geotechnical report" means a report prepared by a certified engineering geologist or a civil engineer practicing within the area of his or her competence, which identifies seismic hazards and recommends mitigation measures to reduce the risk of seismic hazard to acceptable levels.

(c) "Mitigation" means those measures that are consistent with established practice and that will reduce seismic risk to acceptable levels.

(d) "Project" has the same meaning as in Chapter 7.5 (commencing with Section 2621), except as follows:

(1) A single-family dwelling otherwise qualifying as a project may be exempted by the city or county having jurisdiction of the project.

(2) "Project" does not include alterations or additions to any structure within a seismic hazard zone which do not exceed either 50 percent of the value of the structure or 50 percent of the existing floor area of the structure.

(e) "Commission" means the Seismic Safety Commission.

~~(f) "Board" means the State Mining and Geology Board.~~

2695. (a) On or before January 1, 1992, the department ~~board~~, in consultation with the director and the commission, shall develop all of the following:

(1) Guidelines for the preparation of maps of seismic hazard zones in the state.

(2) Priorities for mapping of seismic hazard zones. In setting priorities, the department ~~board~~ shall take into account the following factors:

(A) The population affected by the seismic hazard in the event of an earthquake.

(B) The probability that the seismic hazard would threaten public health and safety in the event of an earthquake.

(C) The willingness of lead agencies and other public agencies to share the cost of mapping within their jurisdiction.

(D) The availability of existing information.

(3) Policies and criteria regarding the responsibilities of cities, counties, and state agencies pursuant to this chapter. The policies and criteria shall address, but not be limited to, the following:

(A) Criteria for approval of a project within a seismic hazard zone, including mitigation measures.

(B) The contents of the geotechnical report.

(C) Evaluation of the geotechnical report by the lead agency.

(4) Guidelines for evaluating seismic hazards and recommending mitigation measures.

(5) Any necessary procedures, including, but not limited to, processing of waivers pursuant to Section 2697, to facilitate the implementation of this chapter.

(b) In developing the policies and criteria pursuant to subdivision (a), the department ~~board~~ shall consult with ~~and consider the recommendations of an advisory committee, appointed by the board in consultation with the commission,~~ composed of the following members:

~~—(1) An engineering geologist registered in the state.~~

~~—(2) A seismologist.~~

~~—(3) A civil engineer registered in the state.~~

~~—(4) A structural engineer registered in the state.~~

~~—(5) A representative of city government, selected from a list submitted by the League of California Cities.~~

~~—(6) A representative of county government, selected from a list submitted by the County Supervisors Association of California.~~

~~—(7) A representative of regional government, selected from a list submitted by the Council of Governments.~~

~~—(8) A representative of the insurance industry.~~

~~—(9) The Insurance Commissioner.~~

~~—All of the members of the advisory committee shall have expertise in the field of seismic hazards or seismic safety.~~

(c) At least 90 days prior to adopting measures pursuant to this section, the department ~~board~~ shall transmit or cause to be transmitted a draft of those measures to affected cities, counties, and state agencies for review and comment.

2696. (a) The State Geologist shall compile maps identifying seismic hazard zones, consistent with the requirements of Section 2695. The maps shall be compiled in accordance with a time schedule developed by the director and based upon the provisions of Section 2695 and the level of funding available to implement this chapter.

(b) The State Geologist shall, upon completion, submit seismic hazard maps compiled pursuant to subdivision (a) to the department ~~board~~ and all affected cities, counties, and state agencies for review and comment. Concerned jurisdictions and agencies shall submit all comments to the department ~~board~~ for review and consideration within 90 days. Within 90 days of department ~~board~~ review, the State Geologist shall revise the maps, as appropriate, and shall provide copies of the official maps to each state agency, city, or county, including the county recorder, having jurisdiction over lands containing an area of seismic hazard. The county recorder shall record all information transmitted as part of the public record.

(c) In order to ensure that sellers of real property and their agents are adequately informed, any county that receives an official map pursuant to this section shall post a notice within five days of receipt of the map at the office of the county recorder, county assessor, and county planning agency, identifying the location of the map, any information regarding changes to the map, and the effective date of the notice.

2698. Nothing in this chapter is intended to prevent cities and counties from establishing policies and criteria which are more strict than those established by the department ~~board~~.

2714. This chapter does not apply to any of the following activities:

(a) Excavations or grading conducted for farming or the immediate excavation or grading of lands affected by a flood or natural disaster for the purpose of restoring those lands to their prior condition.

(b) Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project and that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements associated with those structures, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

(1) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, Division 13 (commencing with Section 21000).

(2) The lead agency's approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to Division 13 (commencing with Section 21000).

(3) The approved construction project is consistent with the general plan or zoning of the site.

(4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.

(c) Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following conditions:

(1) The plant site is located on lands designated for industrial or commercial uses in the applicable county or city general plan.

(2) The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county.

(3) None of the minerals being processed are being extracted onsite.

(4) All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.

(d) Prospecting for, or the extraction of, minerals for commercial purposes where the removal of overburden or mineral product totals less than 1,000 cubic yards in any one location, and the total surface area disturbed is less than one acre.

(e) Surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose.

(f) Any other surface mining operations that the department board, as defined by Section 2001, determines to be of an infrequent nature and which involve only minor surface disturbances.

(g) The solar evaporation of sea water or bay water for the production of salt and related minerals.

(h) Emergency excavations or grading conducted by the Department of Water Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.

(i) (1) Surface mining operations conducted on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources for the purpose of the State Water Resources Development System or flood control, and surface mining operations on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Reclamation Board for the purpose of flood control, if the Department of Water Resources adopts, after submission to and consultation with, the Department of Conservation, a reclamation plan for lands affected by these activities, and those lands are reclaimed in conformance with the standards specified in regulations of the board adopted pursuant to this chapter. The Department of Water Resources shall provide an annual report to the Department of Conservation by the date specified by the Department of Conservation on these mining activities.

(2) Nothing in this subdivision shall require the Department of Water Resources or the Reclamation Board to obtain a permit or secure approval of a reclamation plan from any city or county in order to conduct surface mining operations specified in paragraph (1). Nothing in this subdivision shall preclude the bringing of an enforcement action pursuant to Section 2774.1, if it is determined that a surface mine operator, acting under contract with the Department of Water

Resources or the Reclamation Board on lands other than those owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources or the Reclamation Board, is otherwise not in compliance with this chapter.

(j) (1) Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to excavation and grading that is conducted adjacent to timber operation or forest management roads and shall not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavation for materials that are, or have been, sold for commercial purposes.

(2) This exemption shall be available only if slope stability and erosion are controlled in accordance with subdivision (f) of Section 3704 and subdivision (d) of Section 3706 of Title 14 of the California Code of Regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and postclosure uses in consultation with the Department of Forestry and Fire Protection.

(k) Excavations, grading, or other earthmoving activities in an oil or gas field that are integral to, and necessary for, ongoing operations for the extraction of oil or gas that comply with all of the following conditions:

(1) The operations are being conducted in accordance with Division 3 (commencing with Section 3000).

(2) The operations are consistent with any general plan or zoning applicable to the site.

(3) The earthmoving activities are within oil or gas field properties under a common owner or operator.

(4) No excavated materials are sold for commercial purposes.

2715. No provision of this chapter or any ruling, requirement, or policy of the department ~~board~~ is a limitation on any of the following:

(a) On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.

(b) On the power of the Attorney General, at the request of the department ~~board~~, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

(c) On the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer.

(d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in Part 3 (commencing with Section 3479) of Division 4 of the Civil Code or for any other private relief.

(e) On the power of any lead agency to adopt policies, standards, or regulations imposing additional requirements on any person if the requirements do not prevent the person from complying with the provisions of this chapter.



(f) On the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residences, open space (including agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes.

2715.5. (a) The Cache Creek Resource Management Plan, in conjunction with a site specific plan deemed consistent by the lead agency with the Cache Creek Resource Management Plan, until December 31, 2012, shall be considered to be a functional equivalent of a reclamation plan for the purposes of this chapter. No other reclamation plan shall be required to be reviewed and approved for any excavation project subject to the Cache Creek Resource Management Plan that is conducted in conformance with an approved site specific plan that is consistent with the Cache Creek Resource Management Plan, and the standards specified in that plan governing erosion control, channel stabilization, habitat restoration, flood control, or infrastructure maintenance, if that plan is reviewed and approved by a lead agency pursuant to this chapter.

(b) For purposes of this section, the board of supervisors of the county in which the Cache Creek Resource Management Plan is to be implemented shall prepare and file the annual report required to be prepared pursuant to Section 2207.

(c) Nothing in this section precludes an enforcement action by the ~~board or the~~ department brought pursuant to this chapter or Section 2207 if the lead agency or the director determines that a surface mining operator, acting under the authority of the Cache Creek Resource Management Plan, is not in compliance with the requirements of this chapter or Section 2207.

(d) "Site specific plan," for the purposes of this section, means an individual project plan approved by the lead agency that is consistent with the Cache Creek Resource Management Plan. Site specific plans prepared in conformance with the Cache Creek Resource Management Plan shall, at a minimum, include the information required pursuant to subdivision (c) of Section 2772, shall comply with the requirements of Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and shall be provided along with a financial assurance estimate to the department for review and comment pursuant to Section 2774. Notwithstanding the number of days authorized by paragraph (1) of subdivision (d) of Section 2774, the department shall review the site specific plan and the financial assurance estimate and prepare any written comments within 15 days from the date of receipt of the plan and the estimate.

(e) Prior to engaging in an excavation activity in conformance with the Cache Creek Resource Management Plan, a surface mining operation shall be required to obtain financial assurances that meet the requirements of Section 2773.1.

(f) This section shall not become operative until the date the department ~~State Mining and Geology Board~~ notifies the Secretary of State in writing that the department ~~board~~ has approved an ordinance adopted by the Board of Supervisors for the County of Yolo that governs in-channel noncommercial

extraction activities carried out pursuant to the Cache Creek Resources Management Plan.

(g) This section shall remain in effect only until December 31, 2012, and as of that date is repealed, unless a later enacted statute that is enacted before December 31, 2012, deletes or extends that date.

2716. (a) Any interested person may commence an action on his or her own behalf against ~~the board~~, the lead agency, the State Geologist, or the director for a writ of mandate pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure to compel ~~the board~~, the State Geologist, or the director to carry out any duty imposed upon them pursuant to this chapter.

(b) For purposes of this section, "person" means an individual, firm, association, corporation, organization, or partnership, or a city, county, district, or the state or any department or agency of the state.

2717. (a) The ~~department board~~ shall submit to the Legislature on December 1<sup>st</sup> of each year a report on the actions taken pursuant to this chapter during the preceding fiscal year. The report shall include a statement of the actions, including legislative recommendations, that are necessary to carry out more completely the purposes and requirements of this chapter.

(b) For purposes of ensuring compliance with Sections 10295.5 and 20676 of the Public Contract Code, the department shall, at a minimum, quarterly publish in the California Regulatory Notice Register, or otherwise make available upon request to the Department of General Services or any other state or local agency, a list identifying all of the following:

(1) Surface mining operations for which a report is required and has been submitted pursuant to Section 2207 that indicates all of the following:

(A) The reclamation plan and financial assurances have been approved pursuant to this chapter.

(B) Compliance with state reclamation standards developed pursuant to Section 2773.

(C) Compliance with the financial assurance guidelines developed pursuant to Section 2773.1.

(D) The annual reporting fee has been submitted to the Department of Conservation.

(2) Surface mining operations for which an appeal is pending before the ~~director board~~ pursuant to subdivision (e) of Section 2770, provided that the appeal shall not have been pending before the ~~director board~~ for more than 180 days.

(3) Surface mining operations for which an inspection is required and for which an inspection notice has been submitted by the lead agency pursuant to Section 2774 that indicates both compliance with the approved reclamation plan and that sufficient financial assurances, pursuant to Section 2773.1, have been approved and secured.

2726. "Area of regional significance" means an area designated by the department board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the state within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local significance.

2727. "Area of statewide significance" means an area designated by the department board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the state and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance.

2728. "Lead agency" means the city, county, San Francisco Bay Conservation and Development Commission, or the department board which has the principal responsibility for approving a reclamation plan pursuant to this chapter.

2734. "State policy" means the regulations adopted by the department board pursuant to Section 2755.

~~2740. In carrying out the provisions of this chapter, the board may establish districts and appoint one or more district technical advisory committees to advise the board. In establishing districts for these committees, the board shall take into account physical characteristics, including, but not limited to, climate, topography, geology, type of overburden, and principal mineral commodities. Members of the committees shall be selected and appointed on the basis of their professional qualifications and training in mineral resource conservation, development and utilization, land use planning, mineral economics, or the reclamation of mined lands.~~

~~2741. The members of the committee shall receive no compensation for their services, but shall be entitled to their actual and necessary expenses incurred in the performance of their duties.~~

2755. The department board shall adopt regulations that establish state policy for the reclamation of mined lands in accordance with Article 1 (commencing with Section 2710) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

2757. The state policy adopted by the department board shall be based upon a study of the factors that significantly affect the present and future condition of mined lands, and shall be used as standards by lead agencies in preparing specific and general plans, including the conservation and land use elements of the general plan and zoning ordinances. The state policy shall not include aspects of regulating surface mining operations which are solely of local concern,

and not of statewide or regional concern, as determined by the department board, such as, but not limited to, hours of operation, noise, dust, fencing, and purely aesthetic considerations.

2759. The state policy shall be ~~continuously~~ reviewed and may be revised. During the formulation or revision of the policy, the department board shall consult with, ~~and carefully evaluate the recommendations of the director, any district technical advisory committees,~~ concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals.

2760. The department board shall not adopt or revise the state policy, unless a public hearing is first held respecting its adoption or revision. At least 30 days prior to the hearing, the department board shall give notice of the hearing by publication pursuant to Section 6061 of the Government Code.

2761. (a) On or before January 1, 1977, and, as a minimum, after the completion of each decennial census, the Office of Planning and Research shall identify portions of the following areas within the state that are urbanized or are subject to urban expansion or other irreversible land uses that would preclude mineral extraction:

(1) Standard metropolitan statistical areas and other areas for which information is readily available.

(2) Other areas as may be requested by the department board.

(b) In accordance with a time schedule, and based upon guidelines adopted by the department board, the State Geologist shall classify, on the basis solely of geologic factors, and without regard to existing land use and land ownership, the areas identified by the Office of Planning and Research, any area for which classification has been requested by a petition which has been accepted by the department board, or any

other areas as may be specified by the department board, as one of the following:

(1) An area that contains mineral deposits and is not of regional or statewide significance.

(2) An area that contains mineral deposits and is of regional or statewide significance.

(3) Areas containing mineral deposits, the significance of which requires further evaluation.

(c) The State Geologist shall require the petitioner to pay the reasonable costs of classifying an area for which classification has been requested by the petitioner.

(d) The State Geologist shall transmit the information to the department board for incorporation into the state policy and for transmittal to lead agencies.

2762. (a) Within 12 months of receiving the mineral information described in Section 2761, and also within 12 months of the designation of an area of

statewide or regional significance within its jurisdiction, every lead agency shall, in accordance with state policy, establish mineral resource management policies to be incorporated in its general plan which will:

(1) Recognize mineral information classified by the State Geologist and transmitted by the department ~~board~~.

(2) Assist in the management of land use which affect areas of statewide and regional significance.

(3) Emphasize the conservation and development of identified mineral deposits.

(b) Every lead agency shall submit proposed mineral resource management policies to the department ~~board~~ for review and comment prior to adoption.

(c) Any subsequent amendment of the mineral resource management policy previously reviewed by the department ~~board~~ shall also require review and comment by the department ~~board~~.

(d) If any area is classified by the State Geologist as an area described in paragraph (2) of subdivision (b) of Section 2761, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a), or otherwise has not yet acted pursuant to subdivision (a), then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare, in conjunction with preparing any environmental document required by Division 13 (commencing with Section 21000), or in any event if no such document is required, a statement specifying its reasons for permitting the proposed use, and shall forward a copy to the State Geologist and the department ~~board~~ for review. If the proposed use is subject to the requirements of Division 13 (commencing with Section 21000), the lead agency shall comply with the public review requirements of that division. Otherwise, the lead agency shall provide public notice of the availability of its statement by all of the following:

(1) Publishing the notice at least one time in a newspaper of general circulation in the area affected by the proposed use.

(2) Directly mailing the notice to owners of property within one-half mile of the parcel or parcels on which the proposed use is located as those owners are shown on the latest equalized assessment role. The public review period shall not be less than 60 days from the date of the notice and shall include at least one public hearing. The lead agency shall evaluate comments received and shall prepare a written response. The written response shall describe the disposition of the major issues raised. In particular, when the lead agency's position on the proposed use is at variance with recommendations and objections raised in the comments, the written response shall address in detail why specific comments and suggestions were not accepted.

(e) Prior to permitting a use which would threaten the potential to extract minerals in an area classified by the State Geologist as an area described in paragraph (3) of subdivision (b) of Section 2761, the lead agency may cause to be prepared an evaluation of the area in order to ascertain the significance of the mineral deposit located therein. The results of such evaluation shall be transmitted to the State Geologist and the department ~~board~~.

2763. (a) If an area is designated by the department ~~board~~ as an area of regional significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of regional significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction.

(b) If an area is designated by the department ~~board~~ as an area of statewide significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of statewide significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of the mineral resources to the state and nation as a whole.

2764. (a) Upon the request of an operator or other interested person and payment by the requesting person of the estimated cost of processing the request, the lead agency having jurisdiction shall amend its general plan, or prepare a new specific plan or amend any applicable specific plan, that shall, with respect to the continuation of the existing surface mining operation for which the request is made, plan for future land uses in the vicinity of, and access routes serving, the surface mining operation in light of the importance of the minerals to their market region as a whole, and not just their importance to the lead agency's area of jurisdiction.

(b) In adopting amendments to the general plan, or adopting or amending a specific plan, the lead agency shall make written legislative findings as to whether the future land uses and particular access routes will be compatible or incompatible with the continuation of the surface mining operation, and if they are found to be incompatible, the findings shall include a statement of the reasons why they are to be provided for, notwithstanding the importance of the minerals to their market region as a whole or their previous designation by the board, as the case may be.

(c) Any evaluation of a mineral deposit prepared by a lead agency for the purpose of carrying out this section shall be transmitted to the State Geologist and the department ~~board~~.

(d) The procedure provided for in this section shall not be undertaken in any area that has been designated pursuant to Article 6 (commencing with Section 2790) if mineral resource management policies have been established and incorporated in the lead agency's general plan in conformance with Article 4 (commencing with Section 2755).

2770. (a) Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.

(b) Any person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988. If a reclamation plan application is not on file by March 31, 1988, the continuation of the surface mining operation is prohibited until a reclamation plan is submitted to the lead agency. For purposes of this subdivision, reclamation plans may consist of all or the appropriate sections of any plans or written agreements previously approved by the lead agency or another agency, together with any additional documents needed to substantially meet the requirements of Sections 2772 and 2773 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, provided that all documents which together were proposed to serve as the reclamation plan are submitted for approval to the lead agency in accordance with this chapter.

(c) If a person with an existing surface mining operation has received lead agency approval of its financial assurances for reclamation prior to January 1, 1991, the lead agency shall administratively review those existing financial assurances in accordance with subdivision (d) prior to January 1, 1992. The review of existing financial assurances shall not be considered a project for purposes of Division 13 (commencing with Section 21000). Any person with an existing surface mining operation which does not have financial assurances that received lead agency approval prior to January 1, 1991, shall submit financial assurances for reclamation for review in accordance with subdivision (d).

(d) The lead agency's review of reclamation plans submitted pursuant to subdivision (b) or of financial assurances pursuant to subdivision (c) is limited to whether the plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, but, in any event, the lead agency shall require that financial assurances for reclamation be sufficient to perform reclamation of lands remaining disturbed. Reclamation plans or financial assurances determined to substantially meet these requirements shall be approved by the lead agency for purposes of this chapter. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. The operator has

60 days to revise the plan or financial assurances to address identified deficiencies, at which time the revised plan or financial assurances shall be returned to the lead agency for review and approval. Except as specified in subdivision (e) or (i), unless the operator has filed on or before July 1, 1990, an appeal pursuant to subdivision (e) with regard to nonapproval of the reclamation plan, or has filed on or before January 1, 1994, an appeal pursuant to subdivision (e) with regard to nonapproval of financial assurances, and that appeal is pending before the department board, the continuation of the surface mining operation is prohibited until a reclamation plan and financial assurances for reclamation are approved by the lead agency.

(e) Any person who, based on the evidence of the record, can substantiate that a lead agency has either (1) failed to act according to due process or has relied on considerations not related to the specific applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, in reaching a decision to deny approval of a reclamation plan or financial assurances for reclamation, (2) failed to act within a reasonable time of receipt of a completed application, or (3) failed to review and approve reclamation plans or financial assurances as required by subdivisions (c) and (d), may appeal that action or inaction to the department board.

(f) The department board may decline to hear an appeal if it determines that the appeal raises no substantial issues related to the lead agency's review pursuant to this section.

(g) Appeals that the department board does not decline to hear shall be scheduled and heard at a public hearing within 45 days of the filing of the appeal, or any longer period as may be mutually agreed upon by the department board and the person filing the appeal. In hearing an appeal, the department board shall only determine whether the reclamation plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774. A reclamation plan or financial assurances determined to meet these requirements shall be approved. A reclamation plan or financial assurances determined not to meet these requirements shall be returned to the person filing the appeal with a notice of deficiencies, who shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the department board, to correct the noted deficiencies and submit the revised reclamation plan or the revised financial assurances to the lead agency for review and approval.

(h) (1) Within 90 days of a surface mining operation becoming idle, as defined in Section 2727.1, the operator shall submit to the lead agency for review and approval, an interim management plan. The review and approval of an interim management plan shall not be considered a project for purposes of Division 13 (commencing with Section 21000). The approved interim management plan shall be considered an amendment to the surface mining operation's approved reclamation plan, for purposes of this chapter. The interim management plan



shall provide measures the operator will implement to maintain the site in compliance with this chapter, including, but not limited to, all permit conditions.

(2) The interim management plan may remain in effect for a period not to exceed five years, at which time the lead agency shall do one of the following:

(A) Renew the interim management plan for another period not to exceed five years, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

(B) Require the surface mining operator to commence reclamation in accordance with its approved reclamation plan.

(3) The financial assurances required by Section 2773.1 shall remain in effect during the period that the surface mining operation is idle. If the surface mining operation is still idle after the expiration of its interim management plan, the surface mining operation shall commence reclamation in accordance with its approved reclamation plan.

(4) Within 60 days of the receipt of the interim management plan, or a longer period mutually agreed upon by the lead agency and the operator, the lead agency shall review and approve the plan in accordance with its ordinance adopted pursuant to subdivision (a) of Section 2774, so long as the plan satisfies the requirements of this subdivision, and so notify the operator in writing. Otherwise, the lead agency shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the lead agency, to submit a revised plan.

(5) The lead agency shall approve or deny approval of the revised interim management plan within 60 days of receipt. If the lead agency denies approval of the revised interim management plan, the operator may appeal that action to the lead agency's governing body, which shall schedule a public hearing within 45 days of the filing of the appeal, or any longer period mutually agreed upon by the operator and the governing body.

(6) Unless review of an interim management plan is pending before the lead agency, or an appeal is pending before the lead agency's governing body, a surface mining operation which remains idle for over one year after becoming idle as defined in Section 2727.1 without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

(i) Any enforcement action which may be brought against a surface mining operation for operating without an approved reclamation plan, financial assurance, or interim management plan, shall be held in abeyance pending review pursuant to subdivision (b), (c), (d), or (h) or the resolution of an appeal filed with the department ~~board~~ pursuant to subdivision (e), or with a lead agency governing body pursuant to subdivision (h).

2771. Whenever a proposed or existing surface mining operation is within the jurisdiction of two or more public agencies, is a permitted use within the agencies, and is not separated by a natural or manmade barrier coinciding with the boundary of the agencies, the evaluation of the proposed or existing

operation shall be made by the lead agency in accordance with the procedures adopted by the lead agency pursuant to Section 2774. If a question arises as to which public agency is the lead agency, any affected public agency, or the affected operator, may submit the matter to the department board. The department board shall notify in writing all affected public agencies and operators that the matter has been submitted, specifying a date for a public hearing. The department board shall designate the public agency which shall serve as the lead agency, giving due consideration to the capability of the agency to fulfill adequately the requirements of this chapter and to an examination of which of the public agencies has principal permit responsibility.

2773. (a) The reclamation plan shall be applicable to a specific piece of property or properties, shall be based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities, and shall establish site-specific criteria for evaluating compliance with the approved reclamation plan, including topography, revegetation and sediment, and erosion control.

(b) ~~By January 1, 1992, the~~ The department, pursuant to Section 2759, board shall ~~adopt~~ review those regulations specifying minimum, verifiable statewide reclamation standards.

Subjects for which standards shall be set include, but shall not be limited to, the following:

- (1) Wildlife habitat.
- (2) Backfilling, regrading, slope stability, and recontouring.
- (3) Revegetation.
- (4) Drainage, diversion structures, waterways, and erosion control.
- (5) Prime and other agricultural land reclamation.
- (6) Building, structure, and equipment removal.
- (7) Stream protection.
- (8) Topsoil salvage, maintenance, and redistribution.
- (9) Tailing and mine waste management.

These standards shall apply to each mining operation, but only to the extent that they are consistent with the planned or actual subsequent use or uses of the mining site.

2773.1. (a) Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:

(1) Financial assurances may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of

financial assurances specified by the department ~~board~~ pursuant to subdivision (e), which the lead agency reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.

(2) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

(3) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

(4) The financial assurances shall be made payable to the lead agency and the department. Financial assurances that were approved by the lead agency prior to January 1, 1993, and were made payable to the State Geologist shall be considered payable to the department for purposes of this chapter. However, if a surface mining operation has received approval of its financial assurances from a public agency other than the lead agency, the lead agency shall deem those financial assurances adequate for purposes of this section, or shall credit them toward fulfillment of the financial assurances required by this section, if they are made payable to the public agency, the lead agency, and the department and otherwise meet the requirements of this section. In any event, if a lead agency and one or more public agencies exercise jurisdiction over a surface mining operation, the total amount of financial assurances required by the lead agency and the public agencies for any one year shall not exceed that amount which is necessary to perform reclamation of lands remaining disturbed. For purposes of this paragraph, a "public agency" may include a federal agency.

(b) If the lead agency or the department ~~board~~, following a public hearing, determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, either the lead agency or the director shall do all of the following:

(1) Notify the operator by personal service or certified mail that the lead agency or the director intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing.

(2) Allow the operator 60 days to commence or cause the commencement of reclamation in accordance with its approved reclamation plan and require that reclamation be completed within the time limits specified in the approved reclamation plan or some other time period mutually agreed upon by the lead agency or the director and the operator.

(3) Proceed to take appropriate action to require forfeiture of the financial assurances if the operator does not substantially comply with paragraph (2).

(4) Use the proceeds from the forfeited financial assurances to conduct and complete reclamation in accordance with the approved reclamation plan. In no event shall the financial assurances be used for any other purpose. The operator is responsible for the costs of conducting and completing reclamation in

accordance with the approved reclamation plan which are in excess of the proceeds from the forfeited financial assurances.

(c) Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon written notification by the lead agency, which shall be forwarded to the operator and the director, that reclamation has been completed in accordance with the approved reclamation plan. If a mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the lead agency until new financial assurances are secured from the new owner and have been approved by the lead agency in accordance with Section 2770.

(d) The lead agency shall have primary responsibility to seek forfeiture of financial assurances and to reclaim mine sites under subdivision (b). However, in cases where the department ~~board~~ is not the lead agency pursuant to Section 2774.4, the director may act to seek forfeiture of financial assurances and reclaim mine sites pursuant to subdivision (b) only if both of the following occurs:

(1) The financial incapability of the operator or the abandonment of the mining operation has come to the attention of the director.

(2) The lead agency has been notified in writing by the director of the financial incapability of the operator or the abandonment of the mining operation for at least 15 days, and has not taken appropriate measures to seek forfeiture of the financial assurances and reclaim the mine site; and one of the following has occurred:

(A) The lead agency has been notified in writing by the director that failure to take appropriate measures to seek forfeiture of the financial assurances or to reclaim the mine site shall result in actions being taken against the lead agency under Section 2774.4.

(B) The director determines that there is a violation that amounts to an imminent and substantial endangerment to the public health, safety, or to the environment.

(C) The lead agency notifies the director in writing that its good faith attempts to seek forfeiture of the financial assurances have not been successful. The director shall comply with subdivision (b) in seeking forfeiture of financial assurances and reclaiming mine sites.

(e) The department ~~board~~ may adopt regulations specifying financial assurance mechanisms other than surety bonds, irrevocable letters of credit, and trust funds, which the department ~~board~~ determines are reasonably available and adequate to ensure reclamation pursuant to this chapter, but these mechanisms may not include financial tests, or surety bonds executed by one or more personal sureties. These mechanisms may include reclamation bond pool programs.

(f) On or before March 1, 1993, the department ~~board~~ shall ~~adopt~~ maintain, review, and update the guidelines adopted pursuant to this section by the former State Mining and Geology Board to implement this section. The guidelines are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and are not subject to review by the Office of Administrative Law.

2773.3. (a) In addition to other reclamation plan requirements of this chapter and regulations adopted by the department ~~board~~ pursuant to this chapter, a lead agency may not approve a reclamation plan for a surface mining operation for gold, silver, copper, or other metallic minerals or financial assurances for the operation, if the operation is located on, or within one mile of, any Native American sacred site and is located in an area of special concern, unless both of the following criteria are met:

(1) The reclamation plan requires that all excavations be backfilled and graded to do both of the following:

(A) Achieve the approximate original contours of the mined lands prior to mining.

(B) Grade all mined materials that are in excess of the materials that can be placed back into excavated areas, including, but not limited to, all overburden, spoil piles, and heap leach piles, over the project site to achieve the approximate original contours of the mined lands prior to mining.

(2) The financial assurances are sufficient in amount to provide for the backfilling and grading required by paragraph (1).

(b) For purposes of this section, the following terms have the following meaning:

(1) "Native American sacred site" means a specific area that is identified by a federally recognized Indian Tribe, Rancheria or Mission Band of Indians, or by the Native American Heritage Commission, as sacred by virtue of its established historical or cultural significance to, or ceremonial use by, a Native American group, including, but not limited to, any area containing a prayer circle, shrine, petroglyph, or spirit break, or a path or area linking the circle, shrine, petroglyph, or spirit break with another circle, shrine, petroglyph, or spirit break.

(2) "Area of special concern" means any area in the California desert that is designated as Class C or Class L lands or as an Area of Critical Environmental Concern under the California Desert Conservation Area Plan of 1980, as amended, by the United States Department of the Interior, Bureau of Land Management, pursuant to Section 1781 of Title 43 of the United States Code.

2774. (a) Every lead agency shall adopt ordinances in accordance with state policy that establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations, except that any lead agency without an active surface mining operation in its jurisdiction may defer adopting an implementing ordinance until the filing of a permit application. The ordinances shall establish procedures requiring at least one public hearing and shall be periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinances continue to be in accordance with state policy.

(b) The lead agency shall conduct an inspection of a surface mining operation within six months of receipt by the lead agency of the surface mining operation's report submitted pursuant to Section 2207, solely to determine whether the surface mining operation is in compliance with this chapter. In no event shall a

lead agency inspect a surface mining operation less than once in any calendar year. The lead agency may cause an inspection to be conducted by a state licensed geologist, state licensed civil engineer, state licensed landscape architect, or state licensed forester, who is experienced in land reclamation and who has not been employed by a surface mining operation within the jurisdiction of the lead agency in any capacity during the previous 12 months. All inspections shall be conducted using a form developed by the department and approved by ~~the board~~ that shall include the professional licensing and disciplinary information of the person who conducted the inspection. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall notify the director within 30 days of the date of completion of the inspection that the inspection has been conducted. The notice shall contain a statement regarding the surface mining operation's compliance with this chapter, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operations, if any, are inconsistent with this chapter. If the surface mining operation has a review of its reclamation plan, financial assurances, or an interim management plan pending under subdivision (b), (c), (d), or (h) of Section 2770, or an appeal pending before the department ~~board~~ or lead agency governing body under subdivision (e) or (h) of Section 2770, the notice shall so indicate. The lead agency shall forward to the operator a copy of the notice, a copy of the completed inspection form, and any supporting documentation, including, but not limited to, any inspection report prepared by the geologist, civil engineer, landscape architect, or forester, who conducted the inspection.

(c) Prior to approving a surface mining operation's reclamation plan, financial assurances, including existing financial assurances reviewed by the lead agency pursuant to subdivision (c) of Section 2770, or any amendments, the lead agency shall submit the plan, assurances, or amendments to the director for review. All documentation for that submission shall be submitted to the director at one time. When the lead agency submits a reclamation plan or plan amendments to the director for review, the lead agency shall also submit to the director, for use in reviewing the reclamation plan or plan amendments, information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information. The lead agency shall certify to the director that the reclamation plan is in compliance with the applicable requirements of this chapter and Article 9 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations and the lead agency's mining ordinance in effect at the time that the reclamation plan is submitted to the director for review.

(d) (1) The director shall have 30 days from the date of receipt of a reclamation plan or plan amendments submitted pursuant to subdivision (c), and 45 days from the date of receipt of financial assurances submitted pursuant to subdivision (c), to prepare written comments, if the director so chooses. The lead agency shall evaluate any written comments received from the director relating to the reclamation plan, plan amendments, or financial assurances within a reasonable amount of time.

(2) The lead agency shall prepare a written response to the director's comments describing the disposition of the major issues raised by the director's comments, and submit the lead agency's proposed response to the director at least 30 days prior to approval of the reclamation plan, plan amendment, or financial assurance. The lead agency's response to the director's comments shall describe whether the lead agency proposes to adopt the director's comments to the reclamation plan, plan amendment, or financial assurance. If the lead agency does not propose to adopt the director's comments, the lead agency shall specify, in detail, why the lead agency proposes not to adopt the comments. Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator. The lead agency shall also give the director at least 30 days' notice of the time, place, and date of the hearing before the lead agency at which time the reclamation plan, plan amendment, or financial assurance is scheduled to be approved by the lead agency. If no hearing is required by this chapter, or by the local ordinance, or other state law, then the lead agency shall provide 30 days' notice to the director that it intends to approve the reclamation plan, plan amendment, or financial assurance. The lead agency shall send to the director its final response to the director's comments within 30 days following its approval of the reclamation plan, plan amendment, or financial assurance during which period the department retains all powers, duties, and authorities of this chapter.

(3) To the extent that there is a conflict between the comments of a trustee agency or a responsible agency that are based on the agency's statutory or regulatory authority and the comments of other commenting agencies which are received by the lead agency pursuant to Division 13 (commencing with Section 21000) regarding a reclamation plan or plan amendments, the lead agency shall consider only the comments of the trustee agency or responsible agency.

(e) Lead agencies shall notify the director of the filing of an application for a permit to conduct surface mining operations within 30 days of an application being filed with the lead agency. By July 1, 1991, each lead agency shall submit to the director for every active or idle mining operation within its jurisdiction, a copy of the mining permit required pursuant to Section 2774, and any conditions or amendments to those permits. By July 1 of each subsequent year, the lead agency shall submit to the director for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. Failure to file with the director the information required under this section shall be cause for action under Section 2774.4.

2774.1. (a) Except as provided in subdivision (i) of Section 2770, if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's or the director's notification, the lead agency or the director

may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities.

(b) An order issued under subdivision (a) shall not take effect until the operator has been provided a hearing before the lead agency for orders issued by the lead agency, or director ~~board~~ for orders issued by the department ~~director~~, concerning the alleged violation. Any order issued under subdivision (a) shall specify which aspects of the surface mine's activities or operations are inconsistent with this chapter, shall specify a time for compliance which the lead agency or director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.

(c) Any operator who violates or fails to comply with an order issued under subdivision (a) after the order's effective date, as provided in subdivision (b), or who fails to submit a report to the director or lead agency as required by Section 2207, shall be subject to an order by the lead agency or the director imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with this chapter or Section 2207. The penalty may be imposed administratively by the lead agency or the director. In determining the amount of the administrative penalty, the lead agency or the director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require. Orders setting administrative penalties shall become effective upon issuance thereof and payment shall be made to the lead agency or the director within 30 days, unless the operator petitions the legislative body of the lead agency, the department ~~board~~, or the superior court for review as provided in Section 2774.2. Any order shall be served by personal service or by certified mail upon the operator. Penalties collected by the director shall be used for no purpose other than to cover the reasonable costs incurred by the director in implementing this chapter or Section 2207.

(d) If the lead agency or the director determines that the surface mine is not in compliance with this chapter, so that the surface mine presents an imminent and substantial endangerment to the public health or the environment, the lead agency or the Attorney General, on behalf of the director, may seek an order from a court of competent jurisdiction enjoining that operation.

(e) Upon a complaint by the director or the department, ~~or the board~~, the Attorney General may bring an action to recover administrative penalties under this section, and penalties under Section 2207, in any court of competent jurisdiction in this state against any person violating any provision of this chapter or Section 2207, or any regulation adopted pursuant to this chapter or Section 2207. The Attorney General may bring such an action on his or her own initiative if, after examining the complaint and the evidence, he or she believes a violation has occurred. The Attorney General may also seek an order from a court of



competent jurisdiction compelling the operator to comply with this chapter and Section 2207.

(f) The lead agency has primary responsibility for enforcing this chapter and Section 2207. In cases where the department ~~board~~ is not the lead agency pursuant to Section 2774.4, enforcement actions may be initiated by the director pursuant to this section only after the violation has come to the attention of the director and either of the following occurs:

(1) The lead agency has been notified by the director in writing of the violation for at least 15 days, and has not taken appropriate enforcement action.

(2) The director determines that there is a violation which amounts to an imminent and substantial endangerment to the public health or safety, or to the environment. The director shall comply with this section in initiating enforcement actions.

(g) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

2774.2. (a) Within 30 days of the issuance of an order setting administrative penalties under subdivision (c) of Section 2774.1, the operator may petition that legislative body of the lead agency, if the lead agency has issued the order, or the department ~~board~~ for orders issued by the director, for review of the order. If the operator does not petition for review within the time limits set by this subdivision, the order setting administrative penalties shall not be subject to review by any court or agency.

(b) The legislative body of the lead agency or the department ~~board~~ shall notify the operator by personal service or certified mail whether it will review the order setting administrative penalties. In reviewing an order pursuant to this section, the record shall consist of the record before the lead agency or the director, and any other relevant evidence which, in the judgment of the legislative body or the department ~~board~~, should be considered to effectuate and implement the policies of this chapter.

(c) The legislative body or the department ~~board~~ may affirm, modify, or set aside, in whole or in part, by its own order, any order of the lead agency or the director setting administrative penalties reviewed by the legislative body or the department ~~board~~ pursuant to this section.

(d) Any order of the legislative body or the department ~~board~~ issued under subdivision (c) shall become effective upon issuance thereof, unless the operator petitions the superior court for review as provided in subdivision (e). Any order shall be served by personal service or by certified mail upon the operator. Payment of any administrative penalty which is specified in an order issued under subdivision (c), shall be made to the lead agency or the director within 30 days of service of the order; however, the payment shall be held in an interest bearing impound account pending the resolution of a petition for review filed pursuant to subdivision (e).

(e) Any operator aggrieved by an order of the legislative body or the department ~~board~~ issued under subdivision (c) may obtain review of the order by filing in the superior court a petition for writ of mandate within 30 days following

the issuance of the order. Any operator aggrieved by an order of a lead agency or the director setting administrative penalties under subdivision (c) of Section 2774.1, for which the legislative body or department ~~board~~ denies review, may obtain review of the order in the superior court by filing in the court a petition for writ of mandate within 30 days following the denial of review. The provisions of Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If the operator does not petition for a writ of mandate within the time limits set by this subdivision, an order of the department ~~board~~ or the legislative body shall not be subject to review by any court or agency.

2774.3. The department ~~board~~ shall review lead agency ordinances which establish permit and reclamation procedures to determine whether each ordinance is in accordance with state policy, and shall certify the ordinance as being in accordance with state policy if it adequately meets, or imposes requirements more stringent than, the California surface mining and reclamation policies and procedures established by the department ~~board~~ pursuant to this chapter.

2774.4. (a) If the department ~~board~~ finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the department ~~board~~ shall exercise any of the powers of that lead agency under this chapter, except for permitting authority.

(b) If, no sooner than three years after the department ~~board~~ has taken action pursuant to subdivision (a), the department ~~board~~ finds, after a public hearing, that a lead agency has corrected its deficiencies in implementing and enforcing this chapter, and the rules and regulations adopted pursuant to this chapter, the department ~~board~~ shall restore to the lead agency the powers assumed by the department ~~board~~ pursuant to subdivision (a).

(c) Before taking any action pursuant to subdivision (a), the department ~~board~~ shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the department ~~board~~. If the lead agency has not corrected the deficiencies to the satisfaction of the department ~~board~~ within the 45-day period, the department ~~board~~ shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface

mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207.

(d) Affected surface mining operators and interested persons have the right, at the public hearing, to present oral and written evidence on the matter being considered. The department ~~board~~ may, at the public hearing, place reasonable limits on the right of affected surface mining operators and interested persons to question and solicit testimony.

(e) If, after conducting the public hearing required by subdivision (c), the department ~~board~~ decides to take action pursuant to subdivision (a), the department ~~board~~ shall, based on the record of the public hearing, adopt written findings which explain all of the following:

- (1) The action to be taken by the department ~~board~~.
- (2) Why the department ~~board~~ decided to take the action.
- (3) Why the action is authorized by, and meets the requirements of, subdivision (a).

In addition, the findings shall address the significant issues raised, or written evidence presented, by affected surface mining operators, interested persons, or the lead agency. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the department ~~board~~.

(f) The lead agency, any affected surface mining operator, or any interested person who has presented oral or written evidence at the public hearing before the department ~~board~~ pursuant to subdivision (d) may obtain review of the department ~~board~~ 's action taken pursuant to subdivision (a) by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the department ~~board~~ 's decision. Section 1094.5 of the Code of Civil Procedure governs judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set by this subdivision, the department ~~board~~ 's action under subdivision (a) shall not be subject to review by any court or agency.

2774.5. (a) If, upon review of an ordinance, the department ~~board~~ finds that it is not in accordance with state policy, the department ~~board~~ shall communicate the ordinance's deficiencies in writing to the lead agency. Upon receipt of the written communication, the lead agency shall have 90 days to submit a revised ordinance to the department ~~board~~ for certification as being in accordance with state policy. The department ~~board~~ shall review the lead agency's revised ordinance for certification within 60 days of its receipt. If the lead agency does not submit a revised ordinance within 90 days, the department ~~board~~ shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(b) If, upon review of a lead agency's revised ordinance, the department ~~board~~ finds the ordinance is still not in accordance with state policy, the department ~~board~~ shall again communicate the ordinance's deficiencies in writing to the lead

agency. The lead agency shall have a second 90-day period in which to revise the ordinance and submit it to the department ~~board~~ for review. If the department ~~board~~ again finds that the revised ordinance is not in accordance with state policy or if no revision is submitted, the department ~~board~~ shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(c) In any jurisdiction in which the lead agency does not have a certified ordinance, no person shall initiate a surface mining operation unless a reclamation plan has been submitted to, and approved by, the department ~~board~~. Any reclamation plan, approved by a lead agency under the lead agency's ordinance which was not in accordance with state policy at the time of approval, shall be subject to amendment by the department ~~board~~ or under the ordinance certified by the department ~~board~~ as being in accordance with state policy.

(d) Reclamation plans approved by the department ~~board~~ pursuant to this section shall not be subject to modification by the lead agency at a future date but may be amended by the department ~~board~~. Reclamation plans approved by the department ~~board~~ shall be remanded to the lead agency upon certification of the lead agency's ordinance, and the lead agency shall approve the reclamation plan as approved by the department ~~board~~, except that a subsequent amendment as may be agreed upon between the operator and the lead agency may be made according to this chapter. No additional public hearing shall be required prior to the lead agency's approval. Nothing in this section shall be construed as authorizing the department ~~board~~ to issue a permit for the conduct of mining operations.

2775. (a) An applicant whose request for a permit to conduct surface mining operations in an area of statewide or regional significance has been denied by a lead agency, or any person who is aggrieved by the granting of a permit to conduct surface mining operations in an area of statewide or regional significance, may, within 15 days of exhausting his rights to appeal in accordance with the procedures of the lead agency, appeal to the department ~~board~~.

(b) The department ~~board~~ may, by regulation, establish procedures for declining to hear appeals that it determines raise no substantial issues.

(c) Appeals that the department ~~board~~ does not decline to hear shall be scheduled and heard at a public hearing held within the jurisdiction of the lead agency which processed the original application within 30 days of the filing of the appeal, or such longer period as may be mutually agreed upon by the department ~~board~~ and the person filing the appeal. In any such action, the department ~~board~~ shall not exercise its independent judgment on the evidence but shall only determine whether the decision of the lead agency is supported by substantial evidence in the light of the whole record. If the department ~~board~~ determines the decision of the lead agency is not supported by substantial evidence in the light of the whole record it shall remand the appeal to the lead agency and the lead agency shall schedule a public hearing to reconsider its action.

2790. After receipt of mineral information from the State Geologist pursuant to subdivision (c) of Section 2761, the department ~~board~~ may by regulation adopted after a public hearing designate specific geographic areas of the state as areas of statewide or regional significance and specify the boundaries thereof. Such designation shall be included as a part of the state policy and shall indicate the reason for which the particular area designated is of significance to the state or region, the adverse effects that might result from premature development of incompatible land uses, the advantages that might be achieved from extraction of the minerals of the area, and the specific goals and policies to protect against the premature incompatible development of the area.

2791. The department ~~board~~ shall seek the recommendations of concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals in the identification of areas of statewide and regional significance.

2793. The department ~~board~~ may, by regulation adopted after a public hearing, terminate, partially or wholly, the designation of any area of statewide or regional significance on a finding that the direct involvement of the board is no longer required.

2796.5. (a) The director, with the consultation of appropriate state and local agencies, may remediate or complete reclamation of abandoned mined lands that meet all of the following requirements:

- (1) No operator having both the responsibility and the financial ability to remediate or reclaim the mined lands can be found within the state.
- (2) No reclamation plan is in effect for the mined lands.
- (3) No financial assurances exist for the mined lands.
- (4) The mined lands are abandoned, as that term is used in paragraph (6) of subdivision (h) of Section 2770.

(b) In deciding whether to act pursuant to subdivision (a), the director shall consider whether the action would accomplish one of the following:

- (1) The protection of the public health and safety or the environment from the adverse effects of past surface mining operations.
- (2) The protection of property that is in danger as a result of past surface mining operations.
- (3) The restoration of land and water resources previously degraded by the adverse effects of surface mining operations.

(c) The director may also consider the potential liability to the state in deciding whether to act under this section. Neither the director, the department, nor the state, or its appointees, employees, or agents, in conducting remediation or reclamation under this section, shall be liable under applicable state law, and it is the intent of the Legislature that those persons and entities not be liable for those actions under federal laws.

(d) (1) The remediation or reclamation work performed under this section includes, but is not limited to, supervision of remediation or reclamation activities that, in the director's judgment, is required by the magnitude of the endeavor or

the urgency for prompt action needed to protect the public health and safety or the environment. The action may be taken in default of, or in addition to, remedial work by any other person or governmental agency, and regardless of whether injunctive relief is being sought.

(2) The director may authorize the work to be performed through department staff, with the cooperation of any other governmental agency, or through contracts, and may use rented tools or equipment, either with or without operators furnished.

(3) In cases of emergency where quick action is necessary, notwithstanding any other provision of law, the director may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for the rental of tools or equipment and in addition the furnishing of labor and materials necessary to accomplish the work. These emergency contracts are exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

(4) The director shall be permitted reasonable access to the abandoned mined lands as necessary to perform any remediation or reclamation work. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld or otherwise unobtainable, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, the director may enter the property without consent or the issuance of a warrant.

(e) For any remediation or reclamation work accomplished, or other necessary remedial action taken by any governmental agency, the operator, landowner, and the person or persons who allowed or caused any pollution or nuisance are liable to that governmental agency to the extent of the reasonable costs actually incurred in remediating, reclaiming, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the director to the extent of the director's contribution to the costs of the remediation, reclamation, cleanup, and abatement or other corrective action.

(f) (1) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, which identifies the property on which the remediation or reclamation was accomplished, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien has the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the lien. The lien shall continue for 10 years from the time of the recording of the notice of the lien unless sooner released or otherwise discharged, and may be renewed.

(2) Not later than 45 days after receiving a notice of lien, the owner may petition the court for an order releasing the property from the lien or reducing the amount of the lien. In this court action, the governmental agency that incurred the costs shall establish that the costs were reasonable and necessary. The lien may be foreclosed by an action brought by the director, for a money judgment. Money

recovered by a judgment in favor of the director shall be used for the purposes of this chapter.

(g) If the operation has been idle for more than one year without obtaining an approved interim management plan, an application for the review of an interim management plan filed for the purpose of preventing the director from undertaking remediation or reclamation of abandoned mined lands under this section shall be voidable ~~by the lead agency or the board upon notice and hearing by the lead agency or the board. In the event of conflicting determinations, the decision of the board shall prevail.~~

(h) "Remediate," for the purposes of this section, means to improve conditions so that threat to or damage to public health and safety or the environment are lessened or ameliorated, including the cleanup and abatement of pollution or nuisance or threatened pollution or nuisance.

(i) "Threaten," for the purposes of this section, means a condition creating a probability of harm, when the probability and potential extent of harm make it reasonably necessary to take action to prevent, reduce, or mitigate damages to persons, property, or the environment.

(j) This section shall apply to abandoned mined lands on which the mining operations were conducted after January 1, 1976.

(k) The director may act under this section only upon the appropriation of funds by the Legislature for the purposes of carrying out this section.

(l) Nothing in this section limits the authority of any state agency under any other law or regulation to enforce or administer any cleanup or abatement activity.

36300. The Ocean Resources Task Force is hereby created in state government. The task force is composed of the following or their designee: the Secretary of Environmental Affairs, the Secretary of the Resources Agency, the State Director of Health Services, the Secretary of the Business, Transportation and Housing Agency, the Chairperson or Executive Officer of the State Lands Commission as determined by the commission, the Chairperson or Executive Director of the California Coastal Commission as determined by the commission, the Chairperson or Executive Officer of the Coastal Conservancy as determined by the conservancy, the Chairperson or Executive Director of the San Francisco Bay Conservation and Development Commission as determined by the commission, the Director of Conservation, the Director of Fish and Game, the Director of Boating and Waterways, the Director of Parks and Recreation, ~~the Chairperson of the Mining and Geology Board,~~ the Chairperson or Executive Director of the State Water Resources Control Board as determined by the board, the Executive Officer of each California regional water quality control board for a coastal region, the Director of Finance, the Chairperson or Executive Director of the State Energy Resources Conservation and Development Commission as determined by the commission, the Chairperson of the State Air Resources Board, the Chairperson of the Senate Committee on Natural Resources and Wildlife, the Chairperson of the Assembly Natural Resources Committee, the President of the University of California, the Chancellor of the California State University, and the Director of the California Sea Grant program.

## **WATER CODE**

10933. (a) On or before January 1, 2012, the department shall commence to identify the extent of monitoring of groundwater elevations that is being undertaken within each basin and subbasin.

(b) The department shall prioritize groundwater basins and subbasins for the purpose of implementing this section. In prioritizing the basins and subbasins, the department shall, to the extent data are available, consider all of the following:

- (1) The population overlying the basin or subbasin.
  - (2) The rate of current and projected growth of the population overlying the basin or subbasin.
  - (3) The number of public supply wells that draw from the basin or subbasin.
  - (4) The total number of wells that draw from the basin or subbasin.
  - (5) The irrigated acreage overlying the basin or subbasin.
  - (6) The degree to which persons overlying the basin or subbasin rely on groundwater as their primary source of water.
  - (7) Any documented impacts on the groundwater within the basin or subbasin, including overdraft, subsidence, saline intrusion, and other water quality degradation.
  - (8) Any other information determined to be relevant by the department.
- (c) If the department determines that all or part of a basin or subbasin is not being monitored pursuant to this part, the department shall do all of the following:
- (1) Attempt to contact all well owners within the area not being monitored.
  - (2) Determine if there is an interest in establishing any of the following:
    - (A) A groundwater management plan pursuant to Part 2.75 (commencing with Section 10750).
    - (B) An integrated regional water management plan pursuant to Part 2.2 (commencing with Section 10530) that includes a groundwater management component that complies with the requirements of Section 10753.7.
    - (C) A voluntary groundwater monitoring association pursuant to Section 10935.
- (d) If the department determines that there is sufficient interest in establishing a plan or association described in paragraph (2) of subdivision (c), or if the county agrees to perform the groundwater monitoring functions in accordance with this part, the department shall work cooperatively with the interested parties to comply with the requirements of this part within two years.
- (e) If the department determines, with regard to a basin or subbasin, that there is insufficient interest in establishing a plan or association described in paragraph (2) of subdivision (c), and if the county decides not to perform the groundwater monitoring and reporting functions of this part, the department shall do all of the following:

- (1) Identify any existing monitoring wells that overlie the basin or subbasin that are owned or operated by the department or any other state or federal agency.



(2) Determine whether the monitoring wells identified pursuant to paragraph (1) provide sufficient information to demonstrate seasonal and long-term trends in groundwater elevations.

(3) If the department determines that the monitoring wells identified pursuant to paragraph (1) provide sufficient information to demonstrate seasonal and long-term trends in groundwater elevations, the department shall not perform groundwater monitoring functions pursuant to Section 10933.5.

(4) If the department determines that the monitoring wells identified pursuant to paragraph (1) provide insufficient information to demonstrate seasonal and long-term trends in groundwater elevations, and the ~~State Mining and Geology Board~~ Department of Conservation concurs with that determination, the department shall perform groundwater monitoring functions pursuant to Section 10933.5.

13398. (a) Notwithstanding any other provision of law, a remediating agency that has implemented an approved remediation plan, or a public agency that is effecting reclamation of a mine site pursuant to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), shall not be deemed, based on the actions taken to implement the remediation plan or the reclamation, to be the owner or operator of the abandoned mined lands, or any structure, improvement, waste management unit, or facility on the abandoned mined lands, and shall not be deemed, based on the actions taken to implement the remediation plan or the reclamation, to be responsible for any discharge, or the results of any discharge, of abandoned mine waste on or from any abandoned mined lands, including discharges which have been affected by the activities of the remediating agency or the public agency effecting reclamation of a mine site.

(b) Except as provided in paragraph (c), Chapter 5.5 (commencing with Section 13370), and Section 13398.9, the responsibilities of a remediating agency are limited to the following:

(1) Submitting a remediation plan to the oversight agency for approval in accordance with Section 13398.3. A remediation plan may be submitted in connection with a remediation project that was commenced or completed prior to January 1, 1996.

(2) Implementing a remediation plan that has been approved by the oversight agency.

(3) If required by a remediation plan approved by the oversight agency, maintaining any structure, waste management unit, improvement, or other facility constructed, improved, or placed on the abandoned mined lands.

(4) Periodically monitoring and reporting as required by the oversight agency.

(5) (A) Determining if the remediation plan implemented by the remediating agency has been effective to provide a substantial improvement in water quality affected by abandoned mine waste.

(B) If the remediating agency determines that the remediation plan implemented by the agency is not effective, the remediating agency shall promptly report that determination to the oversight agency. If the remediating agency or the oversight agency determines that the remediation plan implemented by the remediating agency is not effective, the remediating agency

shall submit a modified remediation plan to the oversight agency which includes a proposal to improve the plan to make it effective, or a proposal to cease remedial activities on the abandoned mined lands and return those lands, including the water quality on those lands, to a condition that approximates the quality that existed prior to commencing remedial activities. The remediating agency shall implement the modified remediation plan as approved by the oversight agency.

(6) Notwithstanding any other provision of law, except as provided in Chapter 5.5 (commencing with Section 13370), if the remediating agency implements or has implemented the approved remediation plan and any modifications to the plan approved by the oversight agency, the remediating agency, with regard to any discharge of abandoned mine waste that is the subject of the plan, shall not be required to achieve water quality objectives or to comply with other requirements of this division or other laws that are administered by the state board or the regional boards, and shall not be subject to any enforcement actions pursuant to state law based on actions taken to implement the approved remediation plan, except for violations involving gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by the remediating agency.

(c) The responsibilities of a remediating agency that engages in surface mining operations, as defined in Section 2735 of the Public Resources Code, in conjunction with the remediation or reclamation of abandoned mine waste or that performs reclamation of a surface mining operation pursuant to Section 2773.1 or 2796 of the Public Resources Code, include performing the applicable requirements of Section 2207 of the Public Resources Code and the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code). The ~~State Mining and Geology Board~~ Department of Conservation may grant an exemption from the requirements of Section 2207 of the Public Resources Code or from the Surface Mining and Reclamation Act of 1975 to a remediating agency and its contractors solely for the purpose of removing abandoned mine waste in connection with the implementation of an approved remediation plan.

#### **GOVERNMENT CODE**

65080.01. The following definitions apply to terms used in Section 65080:

(a) "Resource areas" include (1) all publicly owned parks and open space; (2) open space or habitat areas protected by natural community conservation plans, habitat conservation plans, and other adopted natural resource protection plans; (3) habitat for species identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies or protected by the federal Endangered Species Act of 1973, the California Endangered Species Act, or the Native Plant Protection Act; (4) lands subject to conservation or agricultural easements for conservation or agricultural purposes by local governments, special districts, or nonprofit 501(c)(3) organizations, areas of the state designated by the ~~State Mining and Geology Board~~ Department of Conservation as areas of statewide or regional significance pursuant to Section 2790 of the Public Resources Code, and lands under Williamson Act contracts; (5) areas

designated for open-space or agricultural uses in adopted open-space elements or agricultural elements of the local general plan or by local ordinance; (6) areas containing biological resources as described in Appendix G of the CEQA Guidelines that may be significantly affected by the sustainable communities strategy or the alternative planning strategy; and (7) an area subject to flooding where a development project would not, at the time of development in the judgment of the agency, meet the requirements of the National Flood Insurance Program or where the area is subject to more protective provisions of state law or local ordinance.

(b) "Farmland" means farmland that is outside all existing city spheres of influence or city limits as of January 1, 2008, and is one of the following:

- (1) Classified as prime or unique farmland or farmland of statewide importance.
- (2) Farmland classified by a local agency in its general plan that meets or exceeds the standards for prime or unique farmland or farmland of statewide importance.

(c) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

(d) "Consistent" shall have the same meaning as that term is used in Section 134 of Title 23 of the United States Code.

(e) "Internally consistent" means that the contents of the elements of the regional transportation plan must be consistent with each other.

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